IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL {LODGING} NO.25 OF 2006
IN
SUMMONS FOR JUDGMENT NO.471 OF 2005
IN
SUMMARY SUIT NO.668 OF 2005

Shyam Singh Parihar .... Appellant
Vs.
Hemant Kumar J. Vaidya .... Respondent

Shri Ankur Gupta i/b M/s. Advani & Co.
for the Appellant.

Shri Y.D. Mulani for the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: FEBRUARY 26, 2007

P.C:

Taken on board on request.

2. Heard. At the request of the learned Advocate for the appellant, three weeks' time is granted to pay the Court fee.

3. This appeal arises from the order dated 29-11-2005 passed by the learned single Judge in Summons for Judgment No.471 of 2005 in Summary Suit No.668 of 2005. The learned single Judge after considering the materials on record placed in support of the request for leave to defend has held that the total claim of the

respondent/plaintiff is for Rs.9,10,414/-. It is the case of the appellant that the appellant had issued three cheques dated 14-10-2001, 18-12-2001 and 1-3-2002. However, all these three cheques were admittedly dishonoured. The only defence which was sought to be raised by the appellant was that there was yet another cheque dated 12-1-2001 for Rs.5,00,000/- issued in favour of the respondent/plaintiff. However, undisputedly, the said cheque was never encashed. As regards the claim of bar of limitation, the same has been rejected by the learned single Judge. In those circumstances, the learned single Judge has held that the appellant has not disclosed any defence as such to the claim put forth by the respondent/plaintiff and therefore the summons for judgment was made absolute and the decree was passed.

4. On merits, apparently, no fault can be found with the impugned order as it clearly narrates that the only defence which was sought to be raised on behalf of the appellant was that the cheque of Rs.5,00,000/- was issued in favour of the respondent. However, undisputedly, the said cheque was never encashed and consequently the liability to repay the amount which was borrowed still remains to be cleared and discharged. It is also not in dispute that the three cheques which were issued were dishonoured. In the circumstances, no fault

can be found with the impugned order holding that the liability to repay the amount still subsist and therefore the decree is warranted.

5. As regards the bar of limitation, apart from making bald allegation in that regard, no specific facts were disclosed which could reveal that the claim of the respondent was barred by limitation. On the other hand, the respondent/plaintiff, in para 17 of the plaint had categorically stated thus:

> "17. That the Plaintiff claim is not barred by the law of limitations as the Plaintiff had deposited the cheques dated 18.12.2001 for sum of Rs.2,00,000/- and cheque dated 1.3.2002 and the above cheques were dishonoured pm 22/3/2002 and accordingly the bank had given their intimation for the dishonour of the cheques and therefore, the cause of action is arisen from 22nd March, 2002 and hence the present suit is filed within the three years time period from the cause of action dated 22.3.2002."

Apparently, there was absolutely no substance in the

plea of bar of limitation which was raised on behalf of the appellant. Being so, there is absolutely no case made out for interference in the impugned order and hence the appeal is liable to be rejected and is accordingly rejected. The Court fee amount should be paid within three weeks.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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